

Assembly Bill No. 2114

Passed the Assembly August 31, 2000

Chief Clerk of the Assembly

Passed the Senate August 30, 2000

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2000, at _____ o'clock ____M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 7851, 7855, 7861, 7863, 7865, 7891, 7892, 7893, 7895, 7931, 7934, 7956, 7958, 8101, 8103, 8106, 8106.1, 8106.5, 8126, 8128, 8130, 8146, 8150, 8152, 8253, 8263, 8270, 8351, 8352.1, 8352.4, 8502, 60012, and 60023 of, to add Chapter 2 (commencing with Section 7360) and Chapter 2.5 (commencing with Section 7385) to Part 2 of Division 2 of, to repeal Sections 8106.7 and 8127.6 of, to repeal Chapter 2 (commencing with Section 7351) and Chapter 2.5 (commencing with Section 7370) of Part 2 of Division 2 of, to repeal and add Chapter 1 (commencing with Section 7301), Chapter 3 (commencing with Section 7401), Chapter 4 (commencing with Section 7451), Chapter 5 (commencing with Section 7651), Chapter 9 (commencing with Section 8301), and Chapter 11 (commencing with Section 8401) of Part 2 of Division 2 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2114, Longville. Motor vehicle and diesel fuel taxes.

Existing law imposes a license tax upon distributors for the privilege of distributing motor vehicle and diesel fuel, at the rate of 18¢ per gallon for each gallon of fuel distributed.

The bill would revise and recast the provisions of the Motor Vehicle Fuel License Tax Law and the Aircraft Jet Fuel License Tax Law to be similar to the provisions of the Diesel Fuel Tax Law which would affect the application of the penal provisions of those laws, thus imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



The people of the State of California do enact as follows:

SECTION 1. Chapter 1 (commencing with Section 7301) of Part 2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 2. Chapter 1 (commencing with Section 7301) is added to Part 2 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

7301. This part is known and may be cited as the “Motor Vehicle Fuel Tax Law.”

7302. Except where the context otherwise requires, the definitions given in this chapter govern the construction of this part.

7303. “Aircraft” means any powered contrivance designed for navigation in the air except a rocket or missile.

7304. “Alcohol” includes ethanol and methanol.

7305. “Approved terminal or refinery” means a terminal or refinery that is operated by a licensed supplier.

7306. “Aviation gasoline” means all special grades of gasoline that are suitable for use in aviation reciprocating engines.

7307. “Blended motor vehicle fuel” means any mixture of motor vehicle fuel with respect to which tax has been imposed and any other liquid on which tax has not been imposed. Blended motor vehicle fuel also means any conversion of a liquid into motor vehicle fuel. “Conversion of a liquid into motor vehicle fuel” occurs when any liquid that is not included in the definition of motor vehicle fuel and that is outside the bulk transfer/terminal system is sold as motor vehicle fuel, delivered as motor vehicle fuel, or represented to be motor vehicle fuel.

7308. “Blender” includes any person that produces or converts blended motor vehicle fuel outside the bulk transfer/terminal system.



7309. “Bulk transfer” means any transfer of motor vehicle fuel by pipeline or vessel.

7310. “Bulk transfer/terminal system” means the motor vehicle fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Motor vehicle fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer/terminal system. Motor vehicle fuel in the fuel tank of any engine, or in any railcar, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

7311. “Enterer” includes any person who is the importer of record (under federal customs law) with respect to motor vehicle fuel. If the importer of record is acting as an agent, the person for whom the agent is acting is the enterer. If there is no importer of record of motor vehicle fuel entered into this state, the owner of the motor vehicle fuel at the time it is brought into this state is the enterer.

7312. “Entry” means the importing of motor vehicle fuel into this state. However, motor vehicle fuel brought into this state in the fuel tank of a motor vehicle or aircraft shall not be deemed to be an “entry” if not removed from the fuel tank except as used for the operation of that motor vehicle or aircraft, except to the extent that the motor vehicle fuel was acquired tax free for export or a refund of tax was claimed as a result of exportation from the state from which that motor vehicle fuel was transported into this state.

7313. “Finished gasoline” means all products (including gasohol) that are commonly known or sold as gasoline.

7314. “Fuel tank” means any receptacle on a motor vehicle from which fuel is supplied for the operation of a motor vehicle.

7315. “Gallon” means the United States gallon of 231 cubic inches or the volumetric gallon adjusted to 60 degrees Fahrenheit when the invoice and settlement is made on the temperature corrected gallonage.

7316. “Gasoline” means finished gasoline and gasoline blendstocks.



7317. “Gasoline blendstocks” means any petroleum product component of gasoline.

7318. “Gasohol” means all blends of gasoline, and alcohol containing more than 15 percent gasoline.

7319. “Highway” includes a way or place, of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel.

7320. “Highway vehicle operator/fueler” includes (a) any person that owns, operates, or otherwise controls a motor vehicle fuel-powered highway vehicle and places, or causes to be placed, motor vehicle fuel or any liquid into the fuel tank of a motor vehicle fuel-powered highway vehicle; or (b) any person who sells motor vehicle fuel on which a claim for refund has been allowed, or any liquid on which tax has not been imposed.

7321. “In this state” or “in the state” means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States of America.

7322. “Industrial user” means any person that receives gasoline blendstocks by bulk transfer for its own use in the manufacture of any product other than finished gasoline.

7323. “Licensed industrial user” means any industrial user that is licensed pursuant to Section 7460.

7324. “Licensed supplier” includes any enterer, position holder, refiner, terminal operator, or throughputter that is licensed as a supplier pursuant to Section 7451.

7325. “Motor vehicle” includes every self-propelled vehicle operated or suitable for operation on the highway, except a vehicle used exclusively upon stationary rails or tracks.

7326. “Motor vehicle fuel” includes gasoline, aviation gasoline, and any inflammable liquid, by whatever name the liquid may be known or sold, which is used or is usable in an explosion type of engine. It does not include diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.



7327. “Motor vehicle fuel-powered highway vehicle” means a motor vehicle that is operated by a motor vehicle fuel-powered engine on a highway.

7328. “Motor vehicle fuel-powered train” means any motor vehicle fuel-powered equipment or machinery that rides on rails, including equipment or machinery that transports passengers, freight, or a combination of both passengers and freight, and equipment or machinery that only carries freight or passengers of the operator thereof. Thus, the term includes a locomotive, work train, switching engine, and track maintenance machine.

7329. “Person” includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, the United States, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

7330. “Pipeline” means any pipeline used at any time to transport motor vehicle fuel.

7331. “Pipeline operator” includes any person that owns, operates, or otherwise controls a pipeline.

7332. “Position holder” includes any person that holds the inventory position in the motor vehicle fuel, as reflected on the records of the terminal operator. A person holds the inventory position in motor vehicle fuel when that person has a contractual agreement with the terminal operator for the use of storage facilities and terminaling services at a terminal with respect to the motor vehicle fuel. “Position holder” includes a terminal operator that owns motor vehicle fuel in its terminal.

7333. “Rack” means a mechanism for delivering motor vehicle fuel from a refinery or terminal into a truck, trailer, railroad car, or other means of nonbulk transfer.

7334. “Refiner” includes any person that owns, operates, or otherwise controls a refinery.



7335. “Refinery” means a facility used to produce motor vehicle fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons, and from which motor vehicle fuel may be removed by pipeline, by vessel, or at a rack.

7336. “Removal” means any physical transfer of motor vehicle fuel, and any use of motor vehicle fuel other than as a material in the production of motor vehicle fuel. However, motor vehicle fuel is not removed when it evaporates or is otherwise lost or destroyed.

7337. “Sale” means:

(a) The transfer of title to, or substantial incidents of ownership in, motor vehicle fuel (other than motor vehicle fuel in a terminal) to a buyer for consideration, which may consist of money, services, or other property.

(b) The transfer of the inventory position in the motor vehicle fuel in a terminal if the buyer becomes the position holder with respect to the taxable fuel.

7338. “Supplier” includes any person who is any of the following:

(a) Blender, as defined in Section 7308.

(b) Enterer, as defined in Section 7311.

(c) Position holder, as defined in Section 7332.

(d) Refiner, as defined in Section 7334.

(e) Terminal operator, as defined in Section 7340.

(f) Throughputter, as defined in Section 7341.

7339. “Terminal” means a motor vehicle fuel storage and distribution facility that is supplied by pipeline or vessel, and from which motor vehicle fuel may be removed at a rack.

7340. “Terminal operator” includes any person that owns, operates, or otherwise controls a terminal.

7341. “Throughputter” means any person that owns motor vehicle fuel within the bulk transfer/terminal system (other than in a terminal) or is a position holder.

7342. “Train operator” includes any person that owns, operates, or controls a motor vehicle fuel-powered train and is licensed as a railroad by a state or federal agency.

7343. “Vessel” includes a barge and every description of motor craft, other than a seaplane on the water, used

or capable of being used as a means of transportation on water.

7344. “Vessel operator” includes any person that owns, operates, or otherwise controls a vessel.

SEC. 3. Chapter 2 (commencing with Section 7351) of Part 2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 4. Chapter 2 (commencing with Section 7360) is added to Part 2 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2. IMPOSITION OF TAX

7360. (a) A tax of eighteen cents (\$0.18) is hereby imposed upon each gallon of fuel subject to the tax in Sections 7362, 7363, and 7364.

(b) If the federal fuel tax is reduced below the rate of nine cents (\$0.09) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the tax rate imposed by this section, on and after the date of the reduction, shall be recalculated by an amount so that the combined state and federal tax rate per gallon equals twenty-seven cents (\$0.27).

(c) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be so exempt under this section.

7361. (a) For the privilege of storing, for the purpose of removal, sale, or use, every distributor owning motor vehicle fuel on January 1, 2002, shall pay a tax of eighteen cents (\$0.18) for each gallon of motor vehicle fuel according to the volumetric measure thereof, on which a tax has not been imposed under Part 2 (commencing with Section 7301) as in effect on December 31, 2001, and tax would have been imposed on any prior removal, entry, or sale of motor vehicle fuel had Sections 7360 to 7363, inclusive, applied to motor vehicle fuel for the period before January 1, 2002.



(b) For purposes of subdivision (a):

(1) “Storing” includes the possession in a storage facility, except an approved terminal or refinery, of motor vehicle fuel as well as the motor vehicle fuel purchased from and invoiced by the seller prior to January 1, 2002, and in transit on that date.

(2) “Owning” means having title to the motor vehicle fuel.

(3) “Distributor” means any person who was required to be licensed as a distributor under Part 2 (commencing with Section 7301) as in effect on December 31, 2001.

7362. The tax specified in Section 7360 is imposed on the removal of motor vehicle fuel in this state from a terminal if the motor vehicle fuel is removed at the rack.

7363. The tax specified in Section 7360 is also imposed on all of the following:

(a) The removal of motor vehicle fuel in this state from any refinery if either of the following applies:

(1) The removal is by bulk transfer and the refiner or the owner of the motor vehicle fuel immediately before the removal is not a licensed supplier.

(2) The removal is at the refinery rack.

(b) The entry of motor vehicle fuel into this state for sale, consumption, use, or warehousing if either of the following applies:

(1) The entry is by bulk transfer and the enterer is not a licensed supplier.

(2) The entry is not by bulk transfer.

(c) The removal or sale of motor vehicle fuel in this state to an unlicensed person unless there was a prior taxable removal, entry, or sale of the motor vehicle fuel.

(d) The removal or sale of blended motor vehicle fuel in this state by the blender thereof. The number of gallons of blended motor vehicle fuel subject to tax is the difference between the total number of gallons of blended motor vehicle fuel removed or sold and the number of gallons of previously taxed motor vehicle fuel used to produce the blended motor vehicle fuel.

7364. The tax specified in Section 7360 is imposed as a backup tax on the delivery into the fuel tank of a motor

vehicle fuel-powered highway vehicle or sale of any of the following:

(a) Any motor vehicle fuel on which a claim for refund has been allowed.

(b) Any liquid on which tax has not been imposed by this part, Part 3 (commencing with Section 8601), or Part 31 (commencing with Section 60001).

7365. Any person that produces blended motor vehicle fuel outside the bulk transfer/terminal system (the blender) shall pay tax as provided in subdivision (d) of Section 7363.

7366. Every enterer shall pay tax on motor vehicle fuel imported into this state as provided in subdivision (b) of Section 7363.

7367. Every highway vehicle operator/fueler is liable for the backup tax imposed under Section 7364.

7368. Every position holder shall pay the tax on the removal of motor vehicle fuel from a terminal as provided in Section 7362.

7369. Every refiner shall pay tax on the removal of motor vehicle fuel from a refinery as provided in subdivision (a) of Section 7363.

7370. The terminal operator is jointly and severally liable for the tax imposed under Section 7362 if both of the following apply:

(a) The position holder with respect to the motor vehicle fuel is a person other than the terminal operator and is not a licensed supplier.

(b) The terminal operator has not met the conditions of Section 7371.

7371. A terminal operator is not liable for tax under Section 7370, if at the time of the removal, all of the following apply:

(a) The terminal operator is a licensed supplier.

(b) The terminal operator has an unexpired notification certificate from the position holder as required by the Internal Revenue Service.

(c) The terminal operator has no reason to believe that any information in the certificate is false.



SEC. 5. Chapter 2.5 (commencing with Section 7370) of Part 2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 6. Chapter 2.5 (commencing with Section 7385) is added to Part 2 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2.5. AIRCRAFT JET FUEL TAX

Article 1. Definitions

7385. Except where the context otherwise requires, the definitions given in this chapter govern the construction of this chapter.

7386. “Aircraft” means any powered contrivance designed for navigation in the air except a rocket or missile.

7387. “Aircraft jet fuel” means any inflammable liquid which is used or sold for use in propelling aircraft operated by the jet or turbine type of engine.

7388. “Aircraft jet fuel dealer” means any person who sells to an aircraft jet fuel user, aircraft jet fuel delivered in this state into the fuel tanks of aircraft or into a storage facility from which the fuel is withdrawn for use in aircraft.

7389. “Aircraft jet fuel user” means any person who uses aircraft jet fuel for the propulsion of an aircraft in this state except the following:

(a) A common carrier by air engaged in the business of transporting persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the authority of the laws of this state, of the United States, or of any foreign government.

(b) A person engaged in the business of constructing or reconstructing by manufacture or assembly of completed aircraft, or modifying, overhauling, repairing, maintaining, or servicing of aircraft.

(c) The armed forces of the United States.



7390. “Fuel tank” means any receptacle on an aircraft from which fuel is supplied for the propulsion of the aircraft.

7391. “Use” means the placing of aircraft jet fuel into the fuel tank of an aircraft in this state.

Article 2. Imposition of Tax

7392. For the privilege of using or selling aircraft jet fuel a tax is imposed upon every aircraft jet fuel dealer at the rate of two cents (\$0.02) for each gallon of that fuel sold to an aircraft jet fuel user or used by the dealer as an aircraft jet fuel user.

7393. The aircraft jet fuel dealer shall make a return of the tax due under Section 7392 as required of suppliers under Section 7651. All of the provisions of this part relating to the collection of the tax shall be applicable to the collection of the tax imposed by Section 7392.

7394. If a person certifies in writing to an aircraft jet fuel dealer that the sale or use of aircraft jet fuel purchased by him or her is not subject to the tax imposed by Section 7392 and the person uses the fuel as an aircraft jet fuel user, the person shall be liable for payment of the tax imposed by Section 7392 as if he or she were an aircraft jet fuel dealer making taxable sales of aircraft jet fuel at the time of that use and the number of gallons of fuel so used shall be deemed the number of gallons sold by him or her.

Article 3. Permit

7395. Every person desiring to become an aircraft jet fuel dealer shall first secure from the board an aircraft jet fuel dealer permit. Applications for permits shall be made to the board on forms prescribed by the board. Before issuing the permit the board may require the applicant to furnish the bond required under Chapter 4 (commencing with Section 7451).

7396. Upon receipt of the application and after the deposit of such bond as the board may require, the board



shall issue to the applicant an aircraft jet fuel dealer permit authorizing the applicant to become a dealer in aircraft jet fuel. The permit is valid until canceled, suspended, or revoked.

Article 4. Administrative Provisions

7397. All of the administrative provisions of this part not inconsistent with this chapter shall be applicable to the administration of the tax imposed by Section 7392.

Article 5. Disposition of Proceeds

7398. All money received in payment of the tax imposed by this chapter shall be deposited in the State Treasury to the credit of the Motor Vehicle Fuel Account in the Transportation Tax Fund, and after the payment of any refunds authorized by this part, the balance remaining shall be transferred to the Aeronautics Account in the State Transportation Fund for allocation pursuant to Section 8352.3.

SEC. 7. Chapter 3 (commencing with Section 7401) of Part 2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 8. Chapter 3 (commencing with Section 7401) is added to Part 2 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 3. EXEMPTIONS

7401. (a) The provisions of this part requiring the payment of motor vehicle fuel taxes do not apply to any of the following:

(1) Any entry or removal from a terminal or refinery of motor vehicle fuel transferred in bulk to a refinery or terminal if the persons involved (including the terminal operator) are licensed suppliers.

(2) The removal of motor vehicle fuel, if all of the following apply:



(A) The motor vehicle fuel is removed by railroad car from an approved refinery and is received at an approved terminal.

(B) The refinery and the terminal are operated by the same licensed supplier.

(C) The refinery is not served by pipeline (other than a pipeline for the receipt of crude oil) or vessel.

(3) Motor vehicle fuel which, pursuant to the contract of sale, is required to be shipped and is shipped to a point outside of this state by a supplier by means of any of the following:

(A) Facilities operated by the supplier.

(B) Delivery by the supplier to a carrier, customs broker, or forwarding agency, whether hired by the purchaser or not, for shipment to the out-of-state point.

(C) Delivery by the supplier to any vessel clearing from a port of this state for a port outside of this state and actually exported from this state in the vessel.

(4) Motor vehicle fuel sold by credit card certified by the United States Department of State to any consulate officer or consulate employee of a foreign government who is not engaged in any private occupation for gain within this state, who uses the motor vehicle fuel in a motor vehicle that is registered with the United States Department of State, and whose government has done either of the following:

(A) Entered into a treaty with the United States providing for the exemption of its representatives from national, state, and municipal taxes.

(B) Granted a similar exemption to representatives of the United States.

(5) Motor vehicle fuel sold to the United States armed forces for use in ships or aircraft, or for use outside this state.

(6) Gasoline blendstocks removed from a pipeline or vessel, when the gasoline blendstocks are received by a licensed industrial user.

(7) Any entry or removal from a terminal or refinery of gasoline blendstocks that are received at an approved



terminal or refinery if the person otherwise liable for the tax is a licensed supplier.

(8) Any entry or removal from a terminal or refinery of gasoline blendstocks not in connection with a sale if the person otherwise liable for the tax is a licensed supplier and the person does not use the gasoline blendstocks to produce finished gasoline.

(9) Any entry or removal from a terminal or refinery of gasoline blendstocks in connection with a sale if the person otherwise liable for the tax is a licensed supplier and at the time of sale, such person has an unexpired exemption certificate described in Section 7402 from the buyer and has no reason to believe any information in the certificate is false.

(10) If paragraph (8) or (9) applied to the removal or entry of gasoline blendstocks, any resale made of gasoline blendstocks, when the person has an unexpired exemption certificate described in Section 7402 from the buyer and has no reason to believe any information in the certificate is false.

(11) Motor vehicle fuel sold by a supplier to a train operator for use in a motor vehicle fuel-powered train or for other off-highway use and the supplier has on hand an exemption certificate described in Section 7403 from the train operator.

(b) For purposes of this section:

(1) “Carrier” means a person or firm engaged in the business of transporting for compensation property owned by other persons, and includes both common and contract carriers.

(2) “Forwarding agent” means a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.

7402. (a) The certificate to be provided by a buyer of gasoline blendstocks consists of a statement that is signed under penalty of perjury by a person with authority to bind the buyer. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records



normally used to document a sale. The certificate expires on the earliest of the following dates:

(1) The date one year after the effective date of the certificate.

(2) The date a new certificate is provided by the buyer to the seller.

(b) An exemption certificate for gasoline blendstocks that states that the blendstocks will not be used to produce finished gasoline shall contain that information and be in the form as the board may prescribe.

7403. (a) The certificate to be provided by a train operator consists of a statement that is signed under penalties of perjury by a person with authority to bind the buyer. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale.

(b) An exemption certificate for motor vehicle fuel used in a motor vehicle fuel-powered train or for other off-highway use shall contain that information and be in the form as the board may prescribe.

7403.1. Prior to issuing an exemption certificate as provided in Section 7403, the train operator shall obtain a license from the board. Every application for a license shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place or places of business, and such other information as the board may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

7403.2. (a) For the privilege of purchasing motor vehicle fuel exempt from taxes under paragraph (11) of subdivision (a) of Section 7401, each train operator must make a report to the board showing:

(1) The name and license number of the supplier from whom it purchased motor vehicle fuel and the number of



gallons of motor vehicle fuel purchased that is exempt from the tax.

(2) Any other information required by the board.

(b) Each train operator shall prepare and file with the board on forms prescribed by the board a report showing the information in subdivision (a) during each quarterly reporting period. The report shall be filed with the board on or before the last day of the month following the close of the quarterly period to which it relates. To facilitate the administration of this part, the board may require the filing of these reports for other than quarterly periods.

(c) All of the administrative provisions of this part relating to a supplier shall be applicable to a train operator.

(d) The board may revoke the train operator's license provided for in Section 7403.1 due to the filing of inaccurate or improper reports.

7404. If a purchaser gives an exemption certificate for motor vehicle fuel pursuant to this chapter to the effect that the motor vehicle fuel purchased will be used in an exempt manner, and sells the motor vehicle fuel or uses the motor vehicle fuel in some other manner or for some other purpose, the purchaser will be liable for payment of the tax under Chapter 2 (commencing with Section 7360) of this part as if the purchaser were a supplier of the motor vehicle fuel at the time of that sale or use.

7405. (a) Any person, including any officer or employee of a corporation, who gives an exemption certificate pursuant to this chapter for motor vehicle fuel that he or she knows at the time of purchase is not to be used by him or her or the corporation in an exempt manner, for the purpose of evading payment of the amount of the tax applicable to the transaction, is guilty of a misdemeanor punishable as provided in Section 8405.

(b) Any person, including any officer or employee of a corporation, who gives an exemption certificate for motor vehicle fuel pursuant to this chapter that he or she knows at the time of purchase is not to be used by him or her or the corporation in an exempt manner, is liable to the state for the amount of tax that would be due if he or



she had not given that certificate. In addition to the tax, the person shall be liable to the state for a penalty of 25 percent of the tax and one thousand dollars (\$1,000) for each certificate issued for personal gain or to evade the payment of taxes.

SEC. 9. Chapter 4 (commencing with Section 7451) of Part 2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 10. Chapter 4 (commencing with Section 7451) is added to Part 2 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 4. LICENSES AND BONDS

Article 1. License for Supplier

7451. Every person before becoming a supplier shall apply to the board for a license authorizing the person to engage in business as a supplier on forms prescribed by the board. A supplier's license shall be issued only to a person who is a supplier of motor vehicle fuel as defined in Section 7338. It is unlawful for any person to be a supplier without first securing a license.

7452. Applications shall be made on forms to be prescribed, prepared, and furnished by the board.

7453. The license issued to any supplier is not transferable and is valid until canceled or revoked.

Article 2. License for Industrial User

7460. Every person before becoming an industrial user shall apply to the board for a license authorizing the person to operate as an industrial user on forms prescribed by the board. An industrial user license shall be issued only to a person who is an industrial user of motor vehicle fuel as defined in Section 7322. It is unlawful for a person to act as an industrial user without first securing a license.



Article 3. License for Pipeline Operator and Vessel
Operator

7470. Every person before becoming a pipeline operator or a vessel operator shall apply to the board for a license on forms prescribed by the board. A pipeline operator license or a vessel operator license shall be issued only to a person who is a pipeline operator or a vessel operator as defined in Sections 7331 and 7344. It is unlawful for a person to act as a pipeline operator or a vessel operator without first securing a license.

Article 4. Bonds

7486. Before granting a license authorizing a person to engage in business as a supplier, the board may require the person to file with the board security, in the form as it prescribes. Any security in the form of cash or insured deposits in banks or savings and loan institutions or a bond or bonds duly executed by an admitted surety insurer, payable to the state shall be held by the board in trust to be used solely in the manner provided by this section conditioned upon faithful performance of all the requirements of this part. Security is expressly provided for the payment of all taxes, penalties, and other obligations of the person arising out of this part.

7487. Subject to the limitations provided in this section, the board shall fix the total amount of the security required of any supplier and may increase or reduce the amount at any time. The total amount of the security required of any supplier shall never be more than three times the estimated average monthly tax liability of the supplier but not in excess of one million dollars (\$1,000,000).

Article 5. Denial of License

7491. The board may refuse to issue a license under this part:

(a) If the application therefor is filed by an applicant who formerly held any license under this part which, prior to the time of filing the application, has been revoked for cause by the board; or

(b) If the board determines that the application therefor is not filed in good faith or made by the real person in interest.

7492. Before the refusal, the board shall grant the applicant a hearing and shall give him or her at least 10 days' written notice of the time and place thereof.

7493. The notice shall be addressed to the applicant at his or her address as it appears in the records of the board, and shall be given in the manner prescribed in Section 7671 for giving notice of a deficiency determination.

Article 6. Revocation of License

7505. The board may revoke the license of any person who refuses or neglects to comply with any provisions of this part or any rule or regulation of the board prescribed and adopted under this part.

7506. The board may revoke any supplier's license held by a person who does not engage in, or who discontinues, the removal, entry, or sale of motor vehicle fuel, producing of blended motor vehicle fuel, owning or holding inventory position of motor vehicle fuel, or owning or operating a refinery or terminal as any of the following:

- (a) A blender, as defined in Section 7308.
- (b) An enterer, as defined in Section 7311.
- (c) A position holder, as defined in Section 7332.
- (d) A refiner, as defined in Section 7334.
- (e) A terminal operator, as defined in Section 7340.
- (f) A throughputter, as defined in Section 7341.

7507. Before revoking any license the board shall notify the licensee to show cause within 10 days after the notice is given, why his or her license should not be revoked. The notice shall be given in the manner prescribed in Section 7671 for giving notice of a deficiency determination.



7508. The board may cancel any license issued under this part immediately upon surrender thereof but before revoking a license the board shall allow the person an opportunity to show cause as provided in Section 7507.

7509. Upon revocation or cancellation of the license of the person or upon his or her cessation of business, all motor vehicle fuel remaining in his or her possession or ownership shall be deemed removed, entered, sold, delivered, or used and subject to jeopardy determination as provided in Section 7698 if, in the judgment of the board, it is necessary to ensure payment of the tax with respect to the removal, entry, sale, delivery, or use of the motor vehicle fuel.

7510. Subsequent to the revocation of the license of a person, the board shall reinstate the permit when the person pays the amount of tax determined, together with interest and penalties, fully complies with this part, and pays a fee of fifty dollars (\$50) to the board for reinstatement. The fee shall not be subject to refund except as provided in Section 8126.

7511. It is unlawful for any person to operate in this state after a license has been revoked.

Article 7. Licensing of Locations

7520. Every person required to be licensed by the board shall provide the board with the names and addresses of all agents operating in this state, the location of all offices or other places of business in this state, and any other information as the board may require.

SEC. 11. Chapter 5 (commencing with Section 7651) of Part 2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 12. Chapter 5 (commencing with Section 7651) is added to Part 2 of Division 2 of the Revenue and Taxation Code, to read:



CHAPTER 5. DETERMINATIONS AND PAYMENTS

Article 1. Returns, Reports, and Payments

7651. Each supplier shall prepare and file with the board on forms prescribed by the board a return showing the total number of gallons of motor vehicle fuel removed, sold, or entered within this state during each calendar month, or that monthly period ended during that calendar month as the board may authorize, the amount of tax due for the month covered by the return, and other information as the board deems necessary for the proper administration of this part. The person shall file the return on or before the last day of the month following the monthly period to which it relates, together with a remittance payable to the Controller for the amount of tax due for that period less whatever amounts may have been paid theretofore for the same period because of returns, prepayment forms, and payments made on a weekly basis. To facilitate the administration of this part, the board may require the filing of the returns for other than monthly periods.

7652. (a) Each throughputter shall prepare and make a report showing the following:

(1) The name and license number of the operator of each terminal at which it holds an inventory position in motor vehicle fuel.

(2) Any other information required by the board.

(b) Each throughputter shall prepare and file with the board on forms prescribed by the board a report showing the information in subdivision (a) during each calendar month, or the monthly period ended during that calendar month as the board may authorize. The person shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods.

7652.5. (a) Each terminal operator shall prepare and file with the board on forms prescribed by the board a report showing, for the calendar month, or that monthly



period ended during the calendar month as the board may authorize, the following:

(1) The name and license number of each person that is a position holder at each terminal it operates;

(2) The amount of motor vehicle fuel received at each terminal it operates;

(3) The identity of each position holder with respect to the rack removals of motor vehicle fuel from each terminal it operates and the volume and dates of the removals;

(4) The amount of motor vehicle fuel stored at each terminal it operates;

(5) The destination (by state) of all motor vehicle fuel removed at a terminal rack of each terminal it operates, to the extent that information has been provided to the terminal operator; and

(6) Any other information required by the board for the proper administration of this part. The terminal operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods.

(b) Upon written approval of the board, a terminal operator may satisfy the requirements of subdivision (a) above by executing and providing to the board a consent and authorization for the Internal Revenue Service to provide to the board under Section 6103 of the Internal Revenue Code, the return filed by the terminal operator under Section 48.4101-2 of Title 26 of the Code of Federal Regulations. The board may, in its sole discretion, rescind its approval and require a terminal operator to file reports as specified in subdivision (a).

7652.7. (a) Each pipeline operator and vessel operator shall prepare and file with the board on forms prescribed by the board a report showing, for the calendar month, or that monthly period ended during the calendar month as the board may authorize, all of the following:



(1) The amount of motor vehicle fuel delivered to each terminal or refinery.

(2) The location of the terminal or refinery where the motor vehicle fuel was delivered.

(3) The date of delivery.

(4) Any other information required by the board for the proper administration of this part.

The pipeline operator and vessel operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods.

(b) Upon written approval of the board, a pipeline operator and vessel operator may satisfy the requirements of subdivision (a) by executing and providing to the board a consent and authorization for the Internal Revenue Service to provide to the board under Section 6103 of the Internal Revenue Code, the return filed by the pipeline operator and vessel operator under Section 48.4101-2 of Title 26 of the Code of Federal Regulations. The board may, in its sole discretion, rescind its approval and require a pipeline operator and vessel operator to file reports as specified in subdivision (a).

7653. Each person subject to the tax imposed under Section 7361, on or before February 28, 2002, shall prepare and file with the board, on forms prescribed by the board, a return showing the total number of gallons of motor vehicle fuel owned by the person on January 1, 2002, for which a tax has not been imposed under Part 2 (commencing with Section 7301) as in effect on December 31, 2001, the amount of the tax imposed, and any other information that the board deems necessary for the proper administration of this part. The return shall be accompanied by a remittance payable to the Controller in the amount of tax due.

7654. (a) Any person who fails to file an information report on or before the required filing date or to include all the information required to be shown on the information report shall pay a penalty of fifty dollars (\$50) for each report.



(b) Any person who files an inaccurate or improper information report shall pay a penalty of fifty dollars (\$50) for each report.

7655. Any person who fails to pay the amount of tax shown to be due by his or her return on or before the last day of the month following the monthly period to which it relates shall pay a penalty of 10 percent of the tax, together with interest on that tax at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

7656. The board for good cause may extend for not to exceed one month the time for making any report or return or paying any tax required under this part. The extension may be granted at any time if a request therefor is filed with the board within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been due without the extension to the date of payment.

7657. If the board finds that a person's failure to make a timely report, return, or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 7654, 7655, 7659.5, 7659.6, 7660, 7705, and 7713. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which the person bases his or her claim for relief.

7657.1. (a) If the board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed by this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely return or payment shall be considered to



be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

7658. If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 7655, 7656, 7661, and 7706. Any person seeking to be relieved of the



interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

7658.1. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Sections 7655 and 7661 where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the person.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

7658.5. Every payment on a delinquent tax shall be applied as follows:

- (a) First, to any interest due on the tax.
- (b) Second, to any penalty imposed by this part.
- (c) The balance, if any, to the tax itself.

Article 2. Prepayments

7659. The provisions of this article apply to suppliers required to file a supplier's return pursuant to Section 7651.

7659.1. Upon written notification by the board, any person whose estimated tax liability under this part averages nine hundred thousand dollars (\$900,000) or more per month, as determined by the board, shall, without regard to the tax in any one month, make a prepayment as prescribed in this section. The prepayment requirement may be satisfied by making a prepayment of an amount not less than 95 percent of the tax liability for the month to which the prepayment

applies or a prepayment not less than 95 percent of the amount of the tax liability reported for the previous month. Prepayments shall be made for the monthly periods designated by the board and during each succeeding monthly period until further notification by the board in writing.

7659.2. Each prepayment shall be accompanied by a report of the amount of that prepayment in a form prescribed by the board and shall be filed with the board on or before the 15th day following each monthly period together with a remittance payable to the Controller of the amount due.

7659.3. The amount of the prepayment shall constitute a credit against the amount of the taxes due and payable for the monthly period for which the prepayment was made and for each succeeding monthly prepayment or period until the credit is fully utilized.

7659.4. In determining whether a person's estimated tax liability averages nine hundred thousand dollars (\$900,000) or more per month, the board may consider tax returns filed pursuant to this part as well as any information in the board's possession or which may come into its possession.

7659.5. Any person required to make a prepayment pursuant to Section 7659.1 who fails to make a timely prepayment but makes that prepayment before the last day of the month following the monthly period for which the prepayment was due, shall also pay a penalty of 6 percent of the amount of prepayment.

7659.6. Any person required to make a prepayment pursuant to Section 7659.1 who fails to make a prepayment before the last day of the month following the monthly period for which the prepayment became due and who files a timely return and payment for the monthly period for which the prepayment became due shall pay a penalty of 6 percent of the amount equal to 95 percent of the tax liability for the monthly period for which the required prepayment was not made.

7659.7. (a) If the failure to make a prepayment as described in Section 7659.6 is due to negligence or



intentional disregard of this part or authorized rules and regulations, the penalty shall be 10 percent, instead of 6 percent.

(b) If any part of a deficiency in prepayment is due to negligence or intentional disregard of this part or authorized rules and regulations, a penalty of 10 percent of the deficiency shall be paid.

(c) The provisions of this section shall not apply to amounts subject to the provisions of Sections 7655, 7660, 7662, 7672, 7673, and 7726.

7659.8. Notification by the board, provided for in Section 7659.1, may be served personally or by mail in the manner prescribed in Section 7671 for service of notice of a deficiency determination.

Article 3. Determination if No Return Made

7660. If any supplier fails, neglects, or refuses to file the return within the time prescribed by this chapter, the board shall estimate the motor vehicle fuel removals, entries or sales for the period for which he or she made no return within the time required. Upon the basis of this estimate the board shall determine the tax due from the supplier, and shall add to the tax a penalty of 10 percent thereof. The board may make a determination for more than one period and may make one or more determinations for the same period.

7661. All determinations so made, exclusive of penalties, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month after the close of the monthly period for which the amount or any portion thereof should have been returned until the date of payment.

7662. If the neglect or refusal of a supplier to file a return is due to fraud or intent to evade the tax, a penalty of 25 percent of the tax shall be added thereto in addition to the 10 percent penalty provided in Section 7660.

7663. Promptly after making its determination the board shall give to the delinquent supplier written notice



of the estimate, tax, and penalty, the notice shall be given in the manner prescribed in Section 7671 for giving notice of a deficiency determination.

Article 4. Deficiency Determinations

7670. If the board is not satisfied with the return made by any supplier, it may make a deficiency determination of the tax required to be paid by the supplier based upon information contained in the return or upon any information in the possession of the board. The board may make a determination for more than one period and may make one or more determinations for the same period. When a business is discontinued a determination may be made at any time thereafter, within the period specified in Section 7675, as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this part.

7671. The board shall give the supplier written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the supplier at the supplier's address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in the United States Post Office, or a mailbox, subpost office, substation or mail chute or other facility maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of that delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

7672. If any part of the deficiency for which a deficiency determination is made is due to neglect or intentional disregard of this part or authorized rules and regulations, a penalty of 10 percent of the amount of the determination shall be added thereto.



7673. If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade the tax, a penalty of 25 percent of the amount of the determination shall be added thereto.

7674. All deficiency determinations, exclusive of penalty, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the close of the monthly period for which the amount or any portion thereof should have been returned until the date of payment.

7675. Except in the case of fraud, intent to evade this part or authorized rules and regulations, or failure to make a return, every notice of a deficiency determination shall be given to the supplier within three years after the last day of the month following the monthly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of a failure to make a return the notice of determination shall be mailed within eight years after the date the return was due.

7675.1. In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be mailed within four months after written request therefor, in the form required by the board, by the fiduciary of the estate or trust or by any other person liable for the tax or any portion thereof.

7676. If, before the expiration of the time prescribed in Section 7675 for the mailing of a notice of deficiency determination, the taxpayer has consented in writing to the mailing of the notice after that time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.



Article 5. Jeopardy Determinations and Weekly
Payments

7698. If the board believes that the collection of any amount of tax imposed under this part will be jeopardized by delay, it shall thereupon make a determination of the amount of tax, noting that fact upon the determination. The amount determined is immediately due and payable.

7699. If the amount of the tax, interest, and penalty specified in the jeopardy determination is not paid within 10 days after service upon the supplier of notice of the determination, the determination becomes final, unless a petition for redetermination is filed within the 10 days, and the delinquency penalty and interest provided in Article 6 (commencing with Section 7710) shall attach to the amount specified.

7700. The supplier against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to Article 6 (commencing with Section 7710). He or she shall, however, file the petition for redetermination with the board within 10 days after the service upon him or her of notice of the determination. At the time of filing the petition for redetermination, the supplier shall deposit with the board such security as it may deem necessary to ensure compliance with this part.

7700.5. In accordance with these rules and regulations as the board may prescribe, the person against whom a jeopardy determination is made may apply for an administrative hearing for one or more of the following purposes:

- (a) To establish that the determination is excessive.
- (b) To establish that the sale of property that may be seized after issuance of the jeopardy determination or any part thereof shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.
- (c) To request the release of all or a part of the property to the person.



(d) To request a stay of collection activities. The application shall be filed within 30 days after service of the notice of jeopardy determination and shall be in writing and state the specific factual and legal grounds upon which it is founded. No security need be posted to file the application and to obtain this hearing. However, if the person does not deposit within the 10-day period prescribed in Section 7700, such security as the board may deem necessary to ensure compliance with this part, the filing of the application shall not operate as a stay of collection activities, except sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for administrative hearing, the board may allow a filing of the application and grant the person an administrative hearing. The filing of an application pursuant to this section shall not affect provisions of Section 7699 relating to the finality date of the determination or to penalty or interest.

7701. If the board deems the procedure necessary in order to insure payment to the state of the amount of taxes due from any supplier under this part, it may require the supplier to make returns and payments of taxes on a weekly basis. The supplier must then file a return each Tuesday showing the total number of gallons of motor vehicle fuel removed, entered, or sold by the supplier during the week ending the Saturday next preceding, the amount of tax due for that week and such other information as the board deems necessary for the proper administration of this article. The return shall be accompanied by a remittance payable to the Controller for the amount of tax due for the period covered.

7702. A supplier required to make weekly payments is not relieved of the duty of filing the verified monthly return required by Article 1 (commencing with Section 7651).

7703. Whenever any supplier who is required to pay tax in weekly installments as provided by Section 7701 fails to make a weekly return or to pay the full amount in accordance with the terms and conditions prescribed by



the board, the supplier's license may be revoked forthwith.

7704. If a supplier fails to make the supplier's weekly return or to pay any weekly installment of the tax, or any part thereof, pursuant to the requirement imposed upon the supplier under Section 7701, the full amount of the installment becomes immediately due and payable. The board shall thereupon make a jeopardy determination under Section 7698 and the Controller and the Attorney General shall forthwith collect the tax due from the supplier in the manner prescribed by Chapters 5 (commencing with Section 7651) and 6 (commencing with Section 7851). All provisions of those chapters, where relevant, apply to collections required to be made under this article.

7705. If any supplier fails to pay any weekly installment of tax shown to be due by the supplier's return on the Tuesday when required to be paid, a penalty of 5 percent shall be added thereto. In addition, if any weekly installment of tax remains unpaid on the last day of the month following the month during which the last of the removals, entries for sales occurred on which the weekly installment was levied, a penalty of 10 percent of the installment, exclusive of penalties, shall be added thereto.

The weekly installment shall be deemed not paid or unpaid on any particular day:

(a) If not paid prior to 5 p.m. of that day, when paid in person.

(b) If the envelope in which the remittance is enclosed bears a post office cancellation mark dated later than that day, when paid by mail.

7706. All jeopardy determinations including those made under Section 7704, exclusive of penalty, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the close of the monthly period for which the amount or any portion thereof should have been returned until the date of payment.



7707. Any notice required by this article shall be given in the manner prescribed in Section 7671 for giving notice of a deficiency determination.

Article 6. Redeterminations

7710. Any supplier against whom a determination is made by the board under Article 3 (commencing with Section 7660) and Article 4 (commencing with Section 7670) may petition for a redetermination within 30 days after the date the notice thereof is given to him. If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of the period.

7710.5 Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision upon the petition for the redetermination.

7711. If a petition for redetermination is filed within the 30-day period, the board shall reconsider the determination and, if the supplier has so requested in his or her petition shall grant him or her an oral hearing and shall give him or her 10 days notice of the time and place of the hearing. Service of notice shall be as prescribed by Section 7671. The board may continue the hearing from time to time as may be necessary.

7711.5. The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the penalty imposed by Section 7662, Section 7673, or Section 7726 applies to the amount of the determination as originally made or as increased, the claim for increase must be asserted within eight years after the date the return for the period for which the increase is asserted was due.

7712. The order or decision of the board upon a petition for redetermination becomes final 30 days after

the giving of notice thereof to the supplier as prescribed by Section 7671.

7713. All determinations made by the board under this chapter are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10 percent of the amount of the determination, exclusive of interest and penalties, shall be added thereto. Payments shall be made in the form of a remittance payable to the Controller and shall be filed with the board together with a copy of the notice of determination which the board shall furnish to the supplier for that purpose.

7714. In making a determination the board may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments. The interest on the underpayments and overpayments shall be computed in the manner set forth in Sections 7674 and 8130.

7715. All payments received by the board from suppliers under this part shall be deposited by the board for the Controller in the State Treasury and appropriate advices of those payments shall be transmitted to the Controller by the board.

7716. The board shall notify the Controller of any and all determinations made pursuant to this chapter as well as the amounts self-determined under this part, and the Controller shall keep an appropriate record of all such matters.

Article 7. Payments by Unlicensed Persons

7726. (a) If any person becomes a supplier without first securing a license, the tax, applicable penalties and interest, if any, become immediately due and payable on account of all motor vehicle fuel removed, sold, or entered by the supplier.

(b) The board shall forthwith ascertain as best it may the amount of motor vehicle fuel removed, sold, or entered and shall determine immediately the tax on the amount, adding to the tax a penalty of 25 percent of the



amount of the tax, and shall give the unlicensed supplier notice of this determination as prescribed by Section 7671; provided, however, that where the board determines that failure to secure a license was due to reasonable cause, the penalty may be waived. The provisions of Sections 7699 and 7700 shall be applicable with respect to the finality of the determination and the right of the unlicensed supplier to petition for a redetermination.

7727. (a) Any person who becomes liable for the backup tax imposed under Section 7364 as a highway vehicle operator/fueler and uses untaxed motor vehicle fuel, causes to be delivered untaxed motor vehicle fuel into the fuel tank of a motor vehicle fuel-powered highway vehicle, or sells untaxed motor vehicle fuel, the tax, applicable penalties and interest, if any, become immediately due and payable on account of all motor vehicle fuel used, delivered, or sold.

(b) The board shall forthwith ascertain as best it may the amount of motor vehicle fuel used, delivered, or sold and shall determine immediately the tax on the amount, adding to the tax a penalty of 25 percent of the amount of tax or five hundred dollars (\$500), whichever is greater, and shall give the highway vehicle operator/fueler notice of this determination as prescribed by Section 7671. The provisions of Sections 7699 and 7700 shall be applicable with respect to the finality of the determination and the right of the highway vehicle operator/fueler to petition for a redetermination.

(c) All administrative provisions contained in this part that apply to a supplier shall also be applicable to a highway vehicle operator/fueler.

7728. The board shall file a copy of this jeopardy determination with the Controller who shall forthwith collect the tax, penalty, and interest due from the unlicensed supplier by seizure and sale of property in the manner prescribed for the collection of a delinquent monthly tax.

7729. At the request of the Controller, the Attorney General shall commence and prosecute to final

determination an action at law to collect the tax, penalty, and interest, or any part thereof, determined against an unlicensed supplier.

7730. In the suit, a copy of the jeopardy determination certified by the secretary of the board or by the Controller, shall be prima facie evidence that the unlicensed supplier is indebted to the state in the amount of the tax, penalties, and interest computed as prescribed by Section 7706.

7731. The foregoing remedies of the state are cumulative.

7732. No action taken pursuant to this article relieves the unlicensed supplier or a highway vehicle operator/fueler in any manner from the penal provisions of this part.

SEC. 13. Section 7851 of the Revenue and Taxation Code is amended to read:

7851. If any supplier is delinquent in the payment of his or her tax, or in the event a determination has been made against him or her which remains unpaid, the Controller may, not later than 10 years after the payment became delinquent, or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the supplier, or owing any debts to the supplier. In the case of any state officer, department or agency, the notice shall be given to such officer, department or agency prior to the time it presents the claim of the delinquent taxpayer to the Controller.

SEC. 14. Section 7855 of the Revenue and Taxation Code, as amended by Chapter 609 of the Statutes of 1998, is amended to read:

7855. (a) The Controller may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or personal



property belonging to a supplier or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the supplier or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the Controller at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the supplier or other person liable for the tax.

(3) Any other payments or credits due or becoming due the supplier or other person liable as the result of

written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 14.5. Section 7855 of the Revenue and Taxation Code, as amended by Chapter 991 of the Statutes of 1999, is amended to read:

7855. (a) The Controller may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or personal property belonging to a supplier or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the supplier or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the Controller at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.



(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term “payments” does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term “payments” does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the supplier or other person liable for the tax.

(3) Any other payments or credits due or becoming due the supplier or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 15. Section 7861 of the Revenue and Taxation Code is amended to read:

7861. The Controller may request the Attorney General to bring suit for the recovery of any unpaid tax, interest, penalties, and costs.

SEC. 16. Section 7863 of the Revenue and Taxation Code is amended to read:

7863. Payment of an amount to the board for and on account of the tax and the acceptance thereof does not bar an action by the state to recover any additional amount which is actually due.



SEC. 17. Section 7865 of the Revenue and Taxation Code is amended to read:

7865. In the action a certificate issued by the board showing unpaid taxes determined against any supplier shall be prima facie evidence of all of the following:

(a) The determination of the tax, the delinquency thereof, and the amount of the tax, interest, penalties, and costs due and unpaid to the state.

(b) The indebtedness of the supplier to the state in the amount of the tax, interest, and penalties therein appearing unpaid.

(c) The full compliance by all persons required to perform administrative duties under this part with all the forms of law in relation to the determination and levy of the tax.

SEC. 18. Section 7891 of the Revenue and Taxation Code is amended to read:

7891. Whenever any supplier is delinquent in the payment of the tax, the Controller or his or her authorized representative may forthwith collect the tax due in the following manner: The Controller shall seize any property, real or personal, of the supplier, and thereafter sell the property, or a sufficient part of it, at public auction to pay the tax due together with any penalties, interest and any costs incurred on account of the seizure and sale.

SEC. 19. Section 7892 of the Revenue and Taxation Code is amended to read:

7892. Notice of the sale and the time and place thereof shall be given to the delinquent supplier and to all persons who have an interest of record in the property in writing at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the supplier or other person at his or her last known residence or place of business in this state. If not personally served, the notice shall be deposited in the United States mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code, in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof



is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount of the taxes, penalties, interest, and costs, the name of the supplier, and the further statement that unless the taxes, penalties, interest, and costs are paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

SEC. 20. Section 7893 of the Revenue and Taxation Code is amended to read:

7893. At the sale the Controller or his or her authorized agent shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the supplier.

SEC. 21. Section 7895 of the Revenue and Taxation Code is amended to read:

7895. If upon the sale the moneys received exceed the amount of all taxes, penalties, interest, and costs due the state from the supplier, the Controller shall return the excess to the supplier and obtain a receipt. If for any reason the receipt of the supplier is not available, the Controller shall deposit the excess moneys in an unclaimed property account, in trust for the supplier, subject to the order of the supplier, the supplier's heirs, successors, or assigns.

SEC. 22. Section 7931 of the Revenue and Taxation Code is amended to read:

7931. Whenever the state acquires any real or personal property seized and sold for delinquent taxes of the supplier, the Controller may, with the consent of the Department of General Services, sell the property or any part thereof at private sale or at public auction.

SEC. 23. Section 7934 of the Revenue and Taxation Code is amended to read:

7934. The Controller shall distribute the proceeds of the sale in the following order:

(a) The payment of all expenses of the sale.

(b) The payment of all amounts due from the supplier under this part.

(c) The remainder to the General Fund of the state.

SEC. 24. Section 7956 of the Revenue and Taxation Code is amended to read:

7956. Whenever a supplier ceases to engage in business as a supplier within the state by reason of the discontinuance, sale, or transfer of the business, the supplier shall give notice in writing thereof to the board on or before the date of the discontinuance, sale, or transfer.

SEC. 25. Section 7958 of the Revenue and Taxation Code is amended to read:

7958. All amounts under this part, not yet due and payable under other provisions hereof, become due and payable concurrently with the discontinuance, sale, or transfer. The supplier shall forthwith make a report and pay all of the amounts due and shall surrender the supplier's license to the board.

SEC. 26. Section 8101 of the Revenue and Taxation Code is amended to read:

8101. The following persons who have paid a tax for motor vehicle fuel, either directly or to the vendor from whom it was purchased, or indirectly by the adding of the amount of the tax to the price of the fuel, shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax:

(a) Any person who buys and uses the motor vehicle fuel for purposes other than operating motor vehicles upon the public highways of the state, except vehicles



subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, which are used for recreational purposes or are rented or leased for recreational purposes, and, on and after July 1, 1974, except motor vehicles subject to registration under Division 3 (commencing with Section 4000) of the Vehicle Code while engaged in off-highway recreational use.

(b) Any person who exports the motor vehicle fuel for use outside of this state. Motor vehicle fuel carried from this state in the fuel tank of a motor vehicle or aircraft is not deemed to be exported from this state unless the motor vehicle fuel becomes subject to tax as an “import” under the laws of the destination state.

(c) Any person who sells the motor vehicle fuel to the armed forces of the United States for use in ships or aircraft or for use outside this state, under circumstances that would have entitled him or her to an exemption from the payment of the tax under Section 7401 had he or she been the supplier of this fuel.

(d) Any person who buys and uses the motor vehicle fuel in any construction equipment which is exempt from vehicle registration pursuant to the Vehicle Code, while operated within the confines and limits of a construction project.

(e) Any supplier who sells motor vehicle fuel which is sold to any consulate officer or consulate employee under circumstances which would have entitled the supplier to an exemption under paragraph (4) of subdivision (a) of Section 7401 if the supplier had sold the motor vehicle fuel directly to the consulate officer or consulate employee.

SEC. 27. Section 8103 of the Revenue and Taxation Code is amended to read:

8103. The Controller, upon the presentation of the properly completed claim and the invoice, shall cause to be paid to the claimant from the taxes collected under this part an amount equal to the taxes collected on the motor vehicle fuel in respect to which the refund is claimed. If no original invoice was created, electronic invoicing shall be accepted as reflected by a computerized facsimile

when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

SEC. 28. Section 8106 of the Revenue and Taxation Code is amended to read:

8106. In lieu of the collection and refund of the tax on motor vehicle fuel used by a supplier in the manner as would entitle a purchaser to claim refund under this article, credit may be given the supplier upon the supplier's tax return and the determination of the amount of tax.

SEC. 29. Section 8106.1 of the Revenue and Taxation Code is amended to read:

8106.1. In lieu of the collection and refund of the tax on motor vehicle fuel sold to a consulate officer or consulate employee of a foreign government by a licensed supplier who would be entitled to claim a refund under subdivision (e) of Section 8101, a credit may be given the supplier upon the supplier's tax return and the determination of the amount of tax shall be in accordance with any rules and regulations which the board may prescribe.

SEC. 30. Section 8106.5 of the Revenue and Taxation Code is amended to read:

8106.5. In lieu of the collection and refund of the tax on motor vehicle fuel exported by a licensed supplier for use outside the state in such a manner as would entitle a supplier to claim a refund under subdivision (b) of Section 8101, credit may be given the supplier upon the supplier's tax return and the determination of the amount of tax in accordance with such rules and regulations as the board may prescribe.

SEC. 31. Section 8106.7 of the Revenue and Taxation Code is repealed.

SEC. 32. Section 8126 of the Revenue and Taxation Code is amended to read:

8126. If the board determines that any amount not required to be paid under this part has been paid by any person that is licensed as a supplier, the board shall set forth that fact in its records and certify the amount



collected in excess of the amount legally due and the person from whom it was collected and certify the amount to the Controller for credit or refund. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 33. Section 8127.6 of the Revenue and Taxation Code is repealed.

SEC. 34. Section 8128 of the Revenue and Taxation Code is amended to read:

8128. (a) Except as provided in subdivision (b) no refund under this article shall be approved by the board after three years from the last day of the month following the month for which the overpayment was made, or with respect to determinations made under Article 3, 4, or 5 of Chapter 5 of this part, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires the later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period unless a claim for credit is filed with the board within that period, or unless the credit relates to a period for which a waiver is given pursuant to Section 7676.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 7676 if a claim therefor is filed with the board before the expiration of the period agreed upon.

SEC. 35. Section 8130 of the Revenue and Taxation Code is amended to read:

8130. Interest shall be paid upon any overpayment of any amount of tax at the modified adjusted rate per month established pursuant to Section 6591.5, from the first day of the month following the period during which the overpayment is made. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

SEC. 36. Section 8146 of the Revenue and Taxation Code is amended to read:

8146. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state or against any officer of the state to prevent or enjoin the collection under this part of any tax determined by the board.

SEC. 37. Section 8150 of the Revenue and Taxation Code is amended to read:

8150. If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any taxes due from the plaintiff under this part, Part 3 (commencing with Section 8601), and Part 31 (commencing with Section 60001), and the balance of the judgment shall be refunded to the plaintiff.

SEC. 38. Section 8152 of the Revenue and Taxation Code is amended to read:

8152. A judgment shall not be rendered in favor of the plaintiff in any action brought against the State Treasurer to recover any tax paid when the action is brought by or in the name of an assignee of the supplier paying the tax or by any person other than the person who paid the tax.

SEC. 39. Section 8253 of the Revenue and Taxation Code is amended to read:

8253. The board may make any examinations of the books and records of highway vehicle operators/fuelers, industrial users, pipeline operators, suppliers, train operators, or vessel operators, and any other investigations as it may deem necessary in carrying out the provisions of this part.



SEC. 40. Section 8263 of the Revenue and Taxation Code is amended to read:

8263. The board shall conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Motor Vehicle Fuel Tax Law which may further improve voluntary compliance and the relationship between taxpayers and government.

SEC. 41. Section 8270 of the Revenue and Taxation Code is amended to read:

8270. (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include motor vehicle fuel tax violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

SEC. 42. Chapter 9 (commencing with Section 8301) of Part 2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 43. Chapter 9 (commencing with Section 8301) is added to Part 2 of Division 2 of the Revenue and Taxation Code, to read:



CHAPTER 9. RECORDS

8301. Every highway vehicle operator/fueler, industrial user, pipeline operator, supplier, train operator, vessel operator and every person dealing in, removing, transporting, or storing motor vehicle fuel in this state shall keep those records, receipts, invoices, and other pertinent papers with respect thereto in that form as the board may require. Failure to maintain records will constitute a misdemeanor punishable as provided in Section 8402.

8302. (a) Each terminal operator shall keep the following information with respect to each rack removal of motor vehicle fuel at each terminal it operates:

- (1) The bill of lading or other shipping document.
- (2) The volume and date of the removal.
- (3) The identity of the person, such as a common carrier, that physically received the fuel.
- (4) The identity of the position holder or position holder's customer.

(5) Any other information required by the Internal Revenue Service pursuant to Section 48.4101-1 of Title 26 of the Code of Federal Regulations.

(b) The terminal operator shall maintain the information described in this section at the terminal from which the removal occurred for at least three months after the removal to which it relates. Thereafter, the terminal operator shall retain the information at a location controlled by the terminal operator for at least four more years.

8303. All records required by this chapter shall be available at all times for the inspection of the board or its representatives.

8304. Upon demand of the board or its representatives a highway vehicle operator/fueler, industrial user, pipeline operator, supplier, train operator, and vessel operator shall furnish a statement under oath reflecting the contents of any records kept by the highway vehicle operator/fueler, industrial user, pipeline operator, supplier, train operator, and vessel

operator with respect to the matters specified in this chapter.

SEC. 44. Section 8351 of the Revenue and Taxation Code is amended to read:

8351. The Controller shall transmit all money received by him or her in payment of taxes, interest, and penalties due under this part to the State Treasurer who shall deposit it in the State Treasury and credit it to the Motor Vehicle Fuel Fund, which is continued in existence as the Motor Vehicle Fuel Account in the Transportation Tax Fund, which fund is hereby created. All fees paid and accepted for issuance or reinstatement of licenses under this part shall be deposited by the board in the State Treasury to the credit of the same account.

Any reference in any law or regulation to the Motor Vehicle Fuel Fund shall be deemed to refer to the Motor Vehicle Fuel Account in the Transportation Tax Fund.

SEC. 45. Section 8352.1 of the Revenue and Taxation Code is amended to read:

8352.1. The money deposited to the credit of the Motor Vehicle Fuel Account may be expended for the following purposes:

(a) To pay the refunds authorized in this part, including refunds due on account of judgments for the return of taxes illegally collected.

(b) To the Controller, to carry out any duties imposed upon him or her by this part.

(c) To the board, to carry out any duties imposed upon it by this part.

(d) To pay the pro rata share of the overhead and general administrative expense of the Controller and the board attributable to duties imposed by this part. The pro rata share is payable upon presentation of a claim against any appropriation from the Motor Vehicle Fuel Account for the support of the Controller or the board, as the case may be.

SEC. 46. Section 8352.4 of the Revenue and Taxation Code is amended to read:

8352.4. Subject to Sections 8352 and 8352.1, there shall be transferred from the money deposited to the credit of



the Motor Vehicle Fuel Account to the Harbors and Watercraft Revolving Fund, for expenditure in accordance with Division 1 (commencing with Section 30) of the Harbors and Navigation Code, the sum of six million six hundred thousand dollars (\$6,600,000) per annum, representing the amount of money in the Motor Vehicle Fuel Account attributable to taxes imposed on distributions of motor vehicle fuel used or usable in propelling vessels. The actual amount shall be calculated using the annual reports of registered boats prepared by the Department of Motor Vehicles for the United States Coast Guard and the formula and method of the December 1972 report prepared for this purpose and submitted to the Legislature on December 26, 1972, by the Director of Transportation. If the amount transferred during each fiscal year is in excess of the calculated amount, the excess shall be retransferred from the Harbors and Watercraft Revolving Fund to the Motor Vehicle Fuel Account. If the amount transferred is less than the amount calculated, the difference shall be transferred from the Motor Vehicle Fuel Account to the Harbors and Watercraft Revolving Fund. No adjustment shall be made if the computed difference is less than fifty thousand dollars (\$50,000), and the amount shall be adjusted to reflect any temporary or permanent increase or decrease that may be made in the rate under the Motor Vehicle Fuel Tax Law. Payments pursuant to this section shall be made prior to payments pursuant to Section 8352.2.

When deemed necessary by the Department of Transportation and the Department of Boating and Waterways, the Department of Transportation, after consultation with the Department of Boating and Waterways, shall prepare, or cause to be prepared, an updated report setting forth the current estimate of the amount of money credited to the Motor Vehicle Fuel Account attributable to taxes imposed on distributions of motor vehicle fuel used or usable in propelling vessels. The Department of Transportation shall submit the report to the Legislature upon its completion.



SEC. 47. Chapter 11 (commencing with Section 8401) of Part 2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 48. Chapter 11 (commencing with Section 8401) is added to Part 2 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 11. VIOLATIONS

8401. It is unlawful for any person, firm, association, or corporation, or any officer or agent thereof, through false statement, trick or device, or otherwise, to do any of the following:

(a) Obtain motor vehicle fuel for export and fail to export it, or cause it not to be exported.

(b) Divert motor vehicle fuel, or cause it to be diverted, from interstate or foreign transit begun in this state.

(c) Return motor vehicle fuel to this state and sell or use it, or cause it to be used or sold in this state, without complying with the provisions of this part and without notifying the supplier from whom the motor vehicle fuel was originally purchased of his or her act.

It is unlawful for any supplier or other person to conspire with any person, firm, association, or corporation, or any officer or agent thereof, to withhold motor vehicle fuel from export, or to divert it from interstate or foreign transit begun in this state, or to return it to this state for sale or use so as to avoid any of the taxes imposed by this part.

Any person violating any provision of this section is guilty of a misdemeanor punishable as provided in Section 8402.

Each shipment illegally diverted or illegally returned constitutes a separate offense, and the unit of each shipment is the cargo of one vessel, or one railroad carload, or one automobile truck load, or such truck and trailer load, or one drum, or one barrel, or one case, or one can.

8402. It is unlawful for any person, firm, association, or corporation, or any officer or agent thereof, to do any of the following:

(a) Fail to pay the tax.

(b) Fail, neglect, or refuse to make and file any statement required by this part in the manner or within the time required.

(c) Make any false statement or conceal any material fact in any record, report, affidavit, or claim provided for in this part.

(d) Violate any other provision of this part.

Any person violating any provision of this section is guilty of a misdemeanor, unless the act is by any other law of this state declared to be a felony, and upon conviction is punishable by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment.

8403. It is unlawful for any person, firm, association, or corporation, or any officer or agent thereof, to conduct any activities requiring a license under this part without a license or after a license has been surrendered, canceled, or revoked. Any violation of this section is subject to the same punishment as is prescribed in Section 8402.

8404. (a) Any person required to make, render, sign, or verify any return or report who makes any false or fraudulent return or report with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a misdemeanor punishable as provided in Section 8402.

(b) Any person who willfully aids or assists in, or procures, counsels, or advises in the preparation or presentation under, or in connection with any matter arising under this part, of a return, report, affidavit, claim, or other document which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with knowledge or consent of the person authorized or required to present the return, report, affidavit, claim, or



document is guilty of a misdemeanor punishable as provided in Section 8402.

8405. (a) Notwithstanding any other provision of this part, any person who willfully evades or attempts in any manner to evade or defeat the payment of the tax imposed by this part is guilty of a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000) and not more than twenty thousand dollars (\$20,000), imprisonment, or both the fine and imprisonment in the discretion of the court. In addition to the fine or imprisonment, or both, each person convicted under this section shall pay up to two dollars (\$2) for each gallon of motor vehicle fuel, or portion thereof, knowingly removed, entered, blended, or possessed, kept, stored, or retained for the purpose of removal or removed, or offered for removal, or entry, or entered, or for sale, or actually sold, or offered for sale, in violation of this section, as determined by the court.

(b) Proceeds of the assessed penalty shall be distributed to the treasurer of the county in which the action was brought for allocation to the prosecuting agency in the amount necessary to reimburse the agency for its costs of prosecution, and to the county for its reasonable costs of administration of this paragraph. Any remaining proceeds shall be deposited in the Motor Vehicle Fuel Account in the Transportation Tax Fund, and shall be available, upon appropriation by the Legislature, to pay administrative costs of the board to enforce this part.

8406. Any prosecution for violation of any of the penal provisions of this part shall be instituted within three years after the commission of the offense, or within two years after the violation is discovered, whichever is later.

SEC. 49. Section 8502 of the Revenue and Taxation Code is amended to read:

8502. The commission may impose, in addition to any other tax authorized by this division, a tax on the privilege of selling within the region, motor vehicle fuel, as defined by Section 7326. The tax shall not apply to motor vehicle fuel used to power aircraft. The tax shall be levied at a rate

established by the commission, but not exceeding ten cents (\$0.10) per gallon. Commencing on January 1 of the year following the election approving the tax, the tax may be imposed for a period not to exceed 20 years.

SEC. 50. Section 60012 of the Revenue and Taxation Code is amended to read:

60012. “Blender” includes any person that produces or converts blended diesel fuel outside the bulk transfer/terminal system.

SEC. 51. Section 60023 of the Revenue and Taxation Code is amended to read:

60023. “Blended diesel fuel” means any mixture of diesel fuel with respect to which tax has been imposed and any other liquid (such as kerosene) on which tax has not been imposed (other than diesel fuel dyed in accordance with United States Environmental Protection Agency or Internal Revenue Service rules). Blended diesel fuel also means any conversion of a liquid into diesel fuel. “Conversion of a liquid into diesel fuel” occurs when any liquid that is not included in the definition of diesel fuel and that is outside the bulk transfer/terminal system is sold as diesel fuel, delivered as diesel fuel, or represented to be diesel fuel.

SEC. 52. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 53. Unless otherwise provided, the provisions of this act shall become operative on January 1, 2002.



Approved _____, 2000

Governor

